

U.S. Department of Labor

Office of Administrative Law Judges
90 Seventh Street, Suite 4-800
San Francisco, CA 94103-1516

(415) 625-2200
(415) 625-2201 (FAX)



Issue Date: 20 January 2009

CASE NO.: 2005-STA-00020

In the Matter of:

PAUL A. MILLER,
Complainant,
vs.

BASIC DRILLING COMPANY,
Respondent.

RECOMMENDED ORDER OF DISMISSAL

This case is on remand from the Administrative Review Board following the Board's consideration of a recommended decision of Administrative Law Judge Paul Mapes on June 7, 2005. Judge Mapes had recommended that the case be dismissed as untimely filed. When the case progressed to the Board, it appears that neither party submitted briefs. More than two years later, on August 30, 2007, the Board vacated Judge Mapes' decision and remanded. It held that Judge Mapes had failed to consider equitable tolling.

Judge Mapes has retired, and the case was reassigned to me. On November 30, 2008, I set a briefing schedule. Respondent filed a timely letter brief on December 26, 2007. Complainant's opposition was due to be filed and served no later than February 8, 2008. Complainant never filed an opposition. Absent an opposition, I still reviewed the record. I found that Complainant was entitled to equitable tolling.

Even as I was doing this, however, it surfaced that all attempts to serve Complainant with orders or copies of filings were being returned as undeliverable. Reviewing the record further and consulting online records of the U.S. Postal Service, I discovered that when the matter was before the Board, it had been serving Complainant at an erroneous address in Las Vegas, California, rather than Las Vegas, Nevada. A signed receipt for certified mail shows that Complainant received the Board's notice to file briefs: the Postal Service must have figured out the right address was in Nevada. But Complainant did not receive the remand order; the receipt for certified mail shows that the order was returned to the Board in Washington, D.C. Thus, it appeared that through no fault of his, Complainant did not know of the remand and was left to believe the dismissal had become final.

By the time this Office served the briefing schedule on remand, the address in Las Vegas, Nevada no longer was good. But I could not fault Complainant for not updating his address information: he likely had been thinking that his case had ended years earlier. I therefore asked this Office to try to develop a good address for Complainant.

When this Office was unable to get a good address, I referred the matter back to the Occupational Safety and Health Administration. Unlike this Office, OSHA has an investigative staff. I asked if OSHA would be willing to try to develop contact information for Complainant. OSHA officials agreed to try.

On October 10, 2008, OSHA's Regional Administrator wrote. His office had discovered that Complainant died on March 29, 2006, in Apache Junction, Arizona. This was more than a year before the Board's remand order. OSHA personnel wrote to Complainant's last two known addresses; both letters were returned as undeliverable. They placed calls to Complainant's last two known telephone numbers; neither was in service. After an online search, they developed three additional telephone numbers; none of these was in service. They made further attempts to get online information at www.google.com and www.whitepages.com, all without success. Finally, OSHA confirmed Complainant's death in the Social Security Death Index.

I recognized that Complainant might have heirs who could succeed to his claim. I again asked for OSHA's help. I asked the Regional Administrator if he would try to identify and locate the executor of Complainant's estate, his widow, and his children, if any of these people exist.

Again, OSHA searched; this time it found nothing. The Regional Administrator wrote that his Office had found a form on which Complainant had listed his father as an emergency contact. There was a name and telephone number. When OSHA tried the telephone number, it had been disconnected. Other attempts to locate Complainant's father were unsuccessful as were attempts to identify other persons who might be Complainant's next of kin.

At this point, I conclude that Complainant has died and that, after reasonable effort, it is not possible to locate any person who potentially could pursue the matter on Complainant's behalf. With no party remaining to prosecute the case, the matter must be dismissed.

RECOMMENDATION

Based on the foregoing, I recommend that this matter be DISMISSED.

After diligent search, we have found no successor in interest to Complainant; therefore there is no one on whom to serve this Order on behalf of Complainant. There will be service by mail on all other parties.

A

STEVEN B. BERLIN
Administrative Law Judge

NOTICE OF REVIEW: The administrative law judge's Recommended Decision and Order, along with the Administrative File, will be automatically forwarded for review to the Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution

Avenue, NW, Washington, DC 20210. *See* 29 C.F.R. § 1978.109(a); Secretary's Order 1-2002, ¶4.c.(35), 67 Fed. Reg. 64272 (2002).

Within thirty (30) days of the date of issuance of the administrative law judge's Recommended Decision and Order, the parties may file briefs with the Board in support of, or in opposition to, the administrative law judge's decision unless the Board, upon notice to the parties, establishes a different briefing schedule. *See* 29 C.F.R. § 1978.109(c)(2). All further inquiries and correspondence in this matter should be directed to the Board.